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May 12, 2004

VIA EMAIL AND OVERNIGHT DELIVERY

Ms. Mary Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: D.T.E. 04-33, Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts pursuant to section 252 of the Communications Act of 1934, as amended, and the *Triennial Review Order*

Dear Ms. Cottrell:

A.R.C. Networks Inc. d/b/a InfoHighway Communications, Broadview Networks Inc., Bullseye Telecom Inc., Choice One Communications of Massachusetts Inc., Comcast Phone of Massachusetts Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, DSCI Corporation, Equal Access Networks LLC, Essex Acquisition Corp., Global Crossing Local Services Incorporated, IDT America Corp., SpectroTel Inc., Talk America Inc., Winstar Communications LLC, XO Communications Inc. and XO Massachusetts Inc. ("Competitive Carrier Group" or "CCG"), through counsel, hereby submit for filing in the above-referenced proceeding before the Massachusetts Department of Telecommunications and Energy their Response to Verizon Massachusetts' Motion to Hold Proceeding in Abeyance. Enclosed please find nine (9) copies of this Response, a duplicate and a self-addressed, postage-paid envelope. Please date-stamp the duplicate upon receipt and return it in the envelope provide.

Ms. Mary Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
May 12, 2004
Page Two

Please feel free to contact Brett Heather Freedson at (202) 887-1211 if you have any questions regarding this filing, or require further information.

Respectfully submitted,

A handwritten signature in black ink, reading "Erin Weber Emmott". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Erin Weber Emmott (BBO #644405)

Counsel to the Competitive Carrier Coalition

cc: Service List (via email and U.S. Mail)

**BEFORE THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Verizon New England Inc. for)	
Arbitration of an Amendment to Interconnection)	
Agreements with Competitive Local Exchange)	
Carriers and Commercial Mobile Radio Service)	D.T.E 04-33
Providers in Massachusetts Pursuant to)	
Section 252 of the Communications Act of 1934,)	
as Amended, and the <i>Triennial Review Order</i>)	

**RESPONSE OF
THE COMPETITIVE CARRIER GROUP TO
VERIZON MASSACHUSETTS' MOTION TO HOLD PROCEEDING IN ABEYANCE**

A.R.C. Networks Inc. d/b/a InfoHighway Communications, Broadview Networks Inc., Bullseye Telecom Inc., Choice One Communications of Massachusetts Inc., Comcast Phone of Massachusetts Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, DSCI Corporation, Equal Access Networks LLC, Essex Acquisition Corp., Global Crossing Local Services Incorporated, IDT America Corp., SpectroTel Inc., Talk America Inc., Winstar Communications LLC, XO Communications Inc. and XO Massachusetts Inc. ("Competitive Carrier Group" or "CCG"), by their attorneys, respectfully submit this Response to the May 5, 2004 Motion of Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon") to hold the above-captioned proceeding in abeyance until June 15, 2004.¹

I. INTRODUCTION AND SUMMARY

The CCG opposes Verizon's Motion to hold this proceeding in abeyance with regard to those issues that are not affected by the District of Columbia Circuit's decision in *United States Telecom Ass'n v. FCC*, Case No. 00-0012 (D.C. Cir. 2004) ("*USTA II*"). Rather the Massachusetts Department of Telecommunications and Energy (the "Department") should

¹ Verizon Massachusetts' Motion to Hold Proceeding in Abeyance Until June 15, 2004, filed May 5, 2004 ("Motion").

move forward and arbitrate those issues raised in the Federal Communications Commission's ("FCC's") Triennial Review Order² that are not impacted by the *USTA II* decision. Moreover, the Department must, without delay, order Verizon to comply with the FCC's current rules with regard to commingling and routine network modifications. Such issues are vital to CLECs' businesses in Massachusetts and resolution cannot be delayed, as requested by Verizon.

With regard to those arbitration issues that may be affected by the *USTA II* decision, the CCG does not oppose Verizon's Motion to hold this proceeding in abeyance until June 15, with the express condition that Verizon will maintain the status quo, pending resolution of this proceeding, and will refrain from engaging in any unilateral action to modify the availability, terms and conditions, and/or pricing for Unbundled Network Elements ("UNEs") offered pursuant to existing interconnection agreements. The CCG has already commented that this Department should address *USTA II* issues in a separate phase of the proceeding, and therefore does not oppose a temporary abatement until June 15.³ Nevertheless, it is imperative

² *Review of the section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17125-26, ¶ 242 (2003), *corrected by Errata*, 18 FCC Rcd 19020 (2003) (collectively "TRO"), *reversed and remanded*, *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases) (decided March 2, 2004) ("Triennial Review Order").

³ As discussed more fully in the Answer of the Competitive Carrier Coalition to Verizon's Petition, when procedurally appropriate, the Department should assert its authority, pursuant to sections 252 and 271 of the Act, as well as state law, to arbitrate the nature and scope of Verizon's ongoing obligation to provide to CLECs access to network elements, as required by the Act and state law.³ Moreover, to the extent that the Department may determine that the rates applicable to network elements provided by Verizon under section 271 of the Act and Massachusetts state law differ from those rates currently available to CLECs under section 251(c)(3) of the Act, the Coalition has urged the Department to immediately establish a "just and reasonable" pricing standard applicable to network elements. Answer of the Competitive Carrier Coalition (A.R.C. Networks Inc. d/b/a InfoHighway Communications, Broadview Networks Inc., Broadview NP Acquisition Corp., Bullseye Telecom Inc., Choice One Communications of Massachusetts Inc., Comcast Phone of Massachusetts Inc., DIECA Communications Inc. d/b/a Covad Communications Company, DSCI Corporation, Equal Access Networks

for the continued provision of competitive services in Massachusetts that Verizon be expressly required to maintain the status quo after June 15 during the pendency of this arbitration.

II. THE DEPARTMENT SHOULD GO FORWARD ON THOSE ISSUES NOT AFFECTED BY USTA II

The Department must require that Verizon comply with the existing requirements of the FCC for commingling of UNEs and services and routine network modifications, as clarified by the Triennial Review Order. Neither of these existing obligations require a change of law amendment to implement.

The FCC's clarification of the rates, terms and conditions pursuant to which CLECs may commingle network elements and services did not create any new legal obligation applicable to Verizon. Significantly, the Triennial Review Order states that "a restriction on commingling would constitute an 'unjust and unreasonable practice' under section 201 of the Act" and an "undue and unreasonable prejudice or advantage" under section 202 of Act, and thus would violate the nondiscrimination requirement in section 251(c)(3) of the Act.⁴ Moreover, the Triennial Review Order expressly requires that Verizon immediately effectuate rates, terms and conditions for commingling of network elements and services by modification of its interstate access tariffs.⁵

Likewise, the FCC simply clarified in the Triennial Review Order that ILECs need to continue to perform routine network modifications and specified what is encompassed in

LLC, Essex Acquisition Corp., Global Crossing Local Services Incorporated, IDT America Corp., KMC Telecom V Inc., SpectroTel, Inc., Talk America Inc., Winstar Communications LLC, XO Communications Inc. and XO Massachusetts Inc.), filed March 16, 2004 ("Answer").

⁴ Triennial Review Order at ¶ 581.

⁵ *Id.* at ¶ 581 and fn. 1791.

that rule.⁶ Therefore, in accordance with the Triennial Review Order, the Department must immediately act to ensure compliance by Verizon with the FCC's existing requirements for commingling of UNEs and services and the performance of routine network modifications.

III. THE DEPARTMENT SHOULD REQUIRE THAT VERIZON MAINTAIN THE STATUS QUO AS A CONDITION TO GRANTING THE MOTION WITH REGARD TO USTA II ISSUES

The CCG does not oppose Verizon's Motion to hold those issues affected by the *USTA II* decision in abeyance until June 15, the date the mandate in *USTA II* is scheduled to issue, assuming no further stay is granted. The CCG does, however, request that the Department expressly order that Verizon maintain the status quo under its current interconnection agreements after June 15, during the pendency of this arbitration proceeding, as a condition to granting its Motion with regard to those issues affected by *USTA II*.

The members of the CCG are rightfully concerned that Verizon may attempt to take unilateral action to modify the availability, terms and conditions, and/or pricing of UNEs offered pursuant to their interconnection agreements. To say that the parties must abide by their current interconnection agreements is not sufficient. Rather, Verizon must be specifically ordered not to attempt to modify, in any way, UNEs or UNE combinations currently offered under existing interconnection agreements or to increase any rates set forth in those agreements, while the current arbitration docket is underway.

As discussed in the CCG's Answer, the Department should evaluate the necessary procedural schedule for addressing any remaining issues at the time *USTA II* goes into effect. If the *USTA II* mandate does, in fact, go into effect on June 15, this Department should direct the

⁶ *Id.* at ¶ 632 ("We require incumbent LECs to make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facilities has already been constructed. By 'routine network modifications' we mean that incumbent LECs must perform those activities that incumbent LECs regularly undertake for their own customers.").

parties to reach a negotiated agreement, with oversight by Department Staff as appropriate, over a subsequent 135-day period. To the extent the parties cannot reach a negotiated agreement, the parties should submit to this Department a jointly-developed issues list at the end of that period, which would trigger another phase of the arbitration proceeding to address those issues impacted by the *USTA II* mandate.⁷

Despite the procedural process necessary to resolve any *USTA II* issues, the Department must expressly require Verizon to maintain the status quo on and after June 15, during the pendency of this arbitration proceeding, in order to protect the contract rights of Massachusetts CLECs from potential unilateral actions by Verizon.

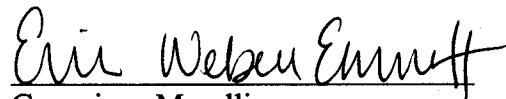
⁷

Answer at 4-5

IV. CONCLUSION

Consistent with the foregoing, the Department should move forward with this proceeding and deny Verizon's Motion to hold the proceeding in abeyance until June 15, with regard to those issues not affected by the *USTA II* decision. With regard to those issues that are impacted by the *USTA II* decision, the Department should expressly require that Verizon maintain the status quo after June 15, pending resolution of this proceeding, and refrain from engaging in any unilateral action to modify the availability, terms and conditions, and/or pricing for UNEs offered pursuant to existing interconnection agreements.

Respectfully submitted,



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